

Rule 1, Ariz. R. Crim. P.

STATUTORY CONSTRUCTION: Presumption against repeal by implication.....Revised 12/2009

When construing a statute, the court's goal is to fulfill the intent of the legislature that wrote it. *State v. Peek*, 219 Ariz. 182, 184, 195 P.3d 641, 643 (2008); *State v. Jernigan*, 221 Ariz. 17, ¶ 9, 209 P.3d 153, 155 (App. 2009). The best and most reliable index of the legislature's intent is the statute's language and, when the language is clear and unequivocal, that language determines the statute's construction. *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296, ¶ 8, 152 P.3d 490, 493 (2007); *City of Phoenix v. Johnson*, 220 Ariz. 189, 191, ¶ 9, 204 P.3d 447, 449 (App. 2009). Therefore, if a court finds no ambiguity in the statute's language, the court must give effect to that language and may not employ other rules of construction to interpret the provision. *North Valley Emergency Specialists, L.L.C. v. Santana*, 208 Ariz. 301, 303, 93 P.3d 501, 503 (2004); *State v. Nelson*, 208 Ariz. 5, 7, ¶ 7, 90 P.3d 206, 208 (App. 2004), *citing Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991). Only if the legislative intent is not clear from the plain language of the statute do courts consider other factors such as the statute's context, subject matter, historical context, effects and consequences, and spirit and purpose. *Watson v. Apache County*, 218 Ariz. 512, 516, ¶ 17, 189 P.3d 1085, 1089 (App. 2008); *Sanderson Lincoln Mercury, Inc. v. Ford Motor Co.*, 205 Ariz. 202, 205, ¶ 11, 68 P.3d 428, 431 (App. 2003) *citing Wyatt v. Wehmueeller*, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991).

If a statute's meaning is less than clear, courts may use other rules of statutory construction. One such rule of statutory construction is that separately-enacted statutes are to be construed to give effect to both, if possible. *Facilitec, Inc. v. Hibbs*, 206 Ariz.

486, 488, ¶ 15, 80 P.3d 765, 767 (2003); *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, ¶ 21, 211 P.3d 16, 26 (App. 2009). Courts presume that when the legislature enacts a statute, it is aware of existing statutes. *County of Cochise v. Faria*, 221 Ariz. 619, ¶ 10, 212 P.3d 957, 960 (App. 2009). Therefore, the courts will avoid a conclusion that by enacting a new statute, the legislature has repealed another statute by implication. *UNUM Life Ins. Co. of America v. Craig*, 200 Ariz. 327, 333, ¶¶ 28-29, 26 P.3d 510, 516 (2001) (noting that implicit repeal of statutes is not favored); *Hounshell v. White*, 219 Ariz. 381, 385, ¶ 13, 199 P.3d 636, 640 (App. 2008). Rather, when statutes appear to conflict, courts will adopt a construction that reconciles one with the other and gives effect to both. *UNUM Life Ins. Co. of America*, 200 Ariz. at 333, ¶¶ 28-29, 26 P.3d at 516; *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 185-186, ¶ 4, 181 P.3d 219, 232-233 (App. 2008).

A statute may be implicitly repealed, however, in one of two instances. See *Hounshell*, 219 Ariz. at 385, ¶ 13, 199 P.3d at 640. The first is when a statute is unavoidably inconsistent with another more recent or more specific statute. *UNUM Life Ins. Co. of America*, 200 Ariz. at 333, ¶¶ 28-29, 26 P.3d at 516 (providing that where "two conflicting statutes cannot operate contemporaneously" the more recent or more specific statute governs). The second is when two statutes cover the same subject matter and the earlier statute is not explicitly retained by the later statute. A.R.S. § 1-245 (2002) ("[I]n all cases provided for by the subsequent statute, the statutes ... theretofore in force, whether consistent or not with the provisions of the subsequent statute, unless expressly continued in force by it, shall be deemed repealed and abrogated"); *Hounshell*, 219 Ariz. at 385, ¶ 13, 199 P.3d at 640, *citing Olson v. State*, 36

Ariz. 294, 301, 285 P. 282, 285 (1930) (stating that repeal by implication results where the subsequent statute deals with "the same subject matter" as the earlier consistent statute).